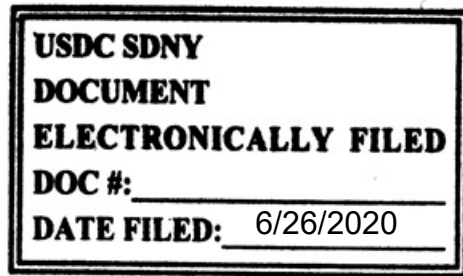


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June 26, 2020

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Via ECF Filing

Magistrate Judge Robert W. Lehrburger
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Graham et al. v. National Beverage Corp.*, No. 19 Civ. 873 (AT)(RWL)

Dear Judge Lehrburger:

We represent Defendant National Beverage Corp. (“NBC”) in the referenced action. We write to request permission for NBC to publicly file a redacted copy of its response to Plaintiffs’ letter dated June 23, 2020.

The standards for filing documents under seal in this Circuit were first set forth in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). In that case, the Second Circuit stated that the “common law right of public access” attaches to “judicial documents”, which are those documents “relevant to the performance of the judicial function and useful in the judicial process.” *Id.* In deciding requests such as this one, the Court needs to balance competing considerations against the right of public access. *Id.* at 120. Valid competing considerations exist where the disclosure of confidential information would subject a party to “financial harm” or cause a party “significant competitive disadvantage.” *Standard Inv. Chartered Inc. v. Fin. Indus. Reg. Auth., Inds.*, 347 Fed App’x 615, 617 (2d Cir. 2009).

Here, good cause exists for NBC’s request. Pursuant to the protective order entered in this case, certain documents and testimony in this case have been labelled as “confidential” or “highly confidential-attorneys’ eyes only.” In its opposition letter, NBC quotes deposition testimony given by representative of certain of its natural flavor suppliers that has been marked as highly confidential, and also includes copies of certain documents that have been produced in the litigation, also marked highly confidential. As this Court is aware, the identity of NBC’s natural flavor suppliers is highly confidential and proprietary information the disclosure of which would harm NBC because it would reveal to competitors the identities of the suppliers used by NBC to manufacture the natural flavor ingredients for the LaCroix Products. NBC proposes to redact from the public filing the names of these NBC suppliers as well as certain testimony and documents that have been marked as highly confidential. *See Awestruck Mktg. Group, LLC v. Black Ops Productions, LLC*, 16-cv-3639 (RJS), 2016 WL 8814349, at *2 (S.D.N.Y. June 20, 2016) (granting motion to seal client list because it “contains sensitive and proprietary information that is not generally publicly available and that, if revealed, could cause significant competitive harm”);

Encyclopedia Brown Prods., Ltd. v. HBO, Inc., 26 F. Supp. 2d 606, 613-14 (S.D.N.Y. 1998) (granting request to seal confidential business information and trade secrets that were commercially valuable to defendants because disclosure would cause irreparable harm, outweighing the public's interest in access to it). An unredacted copy of NBC's letter response highlighting those sections of the letter that NBC wishes to redact from the public record has been provided to the Court for its review. The limited information that NBC seeks to redact in connection with its opposition to Plaintiffs' June 23rd letter request is narrowly tailored to preserve its interests.

For the foregoing reasons, NBC respectfully requests that the Court grant its request.

Respectfully submitted,

/s/ Joanna A. Diakos

SO ORDERED:

6/26/2020



HON. ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE